

Frank L. Corrado
BARRY, CORRADO & GRASSI, PC
2700 Pacific Avenue
Wildwood, NJ 08260
(609) 729-1333
fcorrado@capelegal.com
Attorney for REFLECTIONS
BY RUTH D/B/A
BYTEPHOTO.COM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

GARFUM.COM CORPORATION

Plaintiff,

v.

REFLECTIONS BY RUTH D/B/A
BYTEPHOTO.COM

Defendant.

Case No. 1:14-cv-05919-JEI-KMW

CERTIFICATION OF DANIEL K.
NAZER, ESQUIRE, IN SUPPORT OF
FEE PETITION

Daniel K. Nazer, Esq., being of full age, hereby certifies and says:

1. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.
2. I served as counsel for the defendant and was admitted *pro hac vice* in this matter, pursuant to L. Cv. R. 101.
3. I am an attorney at law, and am currently a member in good standing of the New York and California bars. I was admitted to the New York bar on July 20, 2005 and to the California bar on September 16, 2008.

4. I am Staff Attorney at the Electronic Frontier Foundation (EFF), which is a nonprofit corporation with its principal place of business in San Francisco, California. I am also a Non-Residential Fellow at Stanford Law School's Center for Internet and Society.

5. Prior to joining EFF, I was an associate at Keker & Van Nest, LLP, in San Francisco where I worked on patent litigation. I have acted as counsel in more than a dozen patent cases representing both accused infringers and the patent owner. I have also represented *amicus curiae* in numerous patent cases in United States district courts, the Federal Circuit, and the United States Supreme Court. I am a 2004 graduate of Yale Law School.

6. Attached as Exhibit A to this certification is a copy of my resume, which sets forth my professional qualifications and experience.

7. My services in this case included analysis of plaintiff's patent and claims, drafting defendant's memorandum of law in support of its motion to dismiss, drafting defendant's reply brief in support of its motion to dismiss, drafting defendant's motion for attorney's fees, communicating with the client, and other general litigation and case management tasks.

8. My colleague Vera Ranieri is a Staff Attorney at EFF. Ms. Ranieri assisted with the drafting the Answer and Counterclaims, the defendant's motion to dismiss briefing, and other general litigation tasks.

9. Ms. Ranieri is an attorney at law and is currently a member in good standing of the California bar. She was admitted to the California bar December 1, 2010. Prior to joining EFF, Ms. Ranieri was an associate at Greenburg Traurig,

LLP, in San Francisco where she worked on patent litigation. She has acted as counsel to both patent owners and those accused of infringement. Ms. Ranieri has also represented *amicus curiae* in numerous patent cases in United States district courts, the Federal Circuit, and the United States Supreme Court. She is a 2010 graduate of Harvard Law School.

10. Attached as Exhibit B to this certification is a copy of Ms. Ranieri's resume, which sets forth her professional qualifications and experience.

11. The relevant provisions of EFF's fee agreement with defendant are quoted below. This agreement provides that I, and my co-counsel, would provide our services to defendant on a pro bono basis, and that fees would be recovered only from a court-ordered award of attorney's fees. The agreement also provides that my hourly rate for the matter in the event of a fee recovery is \$570 and that the hourly rate for my colleague Vera Ranieri is \$370. During the defense of this matter, I did not bill the defendants for any fees, and the defendants did not pay me any fees.

12. The relevant provisions of EFF's fee agreement with defendant are quoted below:

Deferred Fees

Legal services will be provided to Clients on a fully deferred basis, to be paid or recovered only from a court-ordered award of attorneys' fees in this litigation, and only if such an award is specifically designated as attorneys' fees by court order or a settlement agreement.

Calculation of Entitlements and Fees

The precise amount of Clients' entitlement to attorneys fees shall be determined by the order, judgment or settlement awarding fees and costs, or by multiplying contemporaneously recorded hours by the agreed upon hourly rate(s), if the order, judgment or settlement does not specifically state hours awarded or hourly rates.

Hourly Rates

For purposes of fee awards, reimbursements, settlements, and other the hourly rates of the attorneys as of the date of this agreement are: Daniel Nazer, Staff Attorney (\$570); Vera Ranieri, Staff Attorney (\$370).

Cooperating Attorneys

Hourly rates for any cooperating attorneys will be at their customary billing rates for equivalent matters. In this case, the hourly rate for Frank L. Corrado is \$450.

13. My and Ms. Ranieri's rates are within the prevailing hourly rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and experience who handle patent litigation. In my experience, because of the specialized nature of patent litigation, defendants in patent suits often hire attorneys from outside their local market to handle such cases.

14. Attached to this certification as Exhibit C is a printout of an itemized invoice for EFF's legal services in this matter. The invoice is based on computerized time records that EFF kept in the normal course of business. These records were created contemporaneously with the performance of the services indicated.

15. The attached billing records show that I spent a total of 87.80 hours on this matter, which is reasonable for the services provided. At a rate of \$570 per hour my total fee in this matter is \$50,046.00.

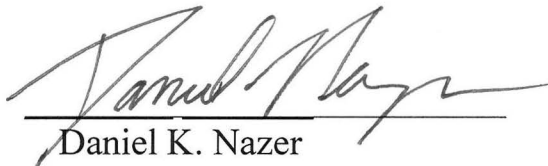
16. The attached billing records show that Ms. Ranieri spent a total of 13.00 hours on this matter, which is reasonable for the services provided. At a rate of \$370 per hour her total fee in this matter is \$4,810.00.

17. This matter was resolved when Garfum, facing a motion by defendant to dismiss its complaint, provided defendant with a covenant not to sue and unilaterally dismissed its claims with prejudice.

18. I respectfully request that the Court award defendant a total of \$54,856.00 in fees for the services EFF performed.

19. Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 2015



Daniel K. Nazer

EXHIBIT A

815 Eddy Street
San Francisco, CA 94109

Daniel Nazer

daniel@eff.org
415-436-9333 x149

Admitted in California and New York

EDUCATION

YALE LAW SCHOOL, NEW HAVEN, CONNECTICUT, J.D., JUNE 2004

Honors: Prize for the Best Paper on Real Property, 2004; Prize for Best Paper on Ethology, Biology, and Related Behavior Sciences and Law, 2004

RUTGERS UNIVERSITY, NEW BRUNSWICK, NEW JERSEY, M.A., PHILOSOPHY, 2001

Honors: Area of Specialization Exam in Philosophy of Mind/Cognitive Science Passed With Distinction; University Excellence Fellowship, 1998-2001

UNIVERSITY OF WESTERN AUSTRALIA, PERTH, AUSTRALIA, B.A. (HONS), PHILOSOPHY, 1998

Honors: Sir Harold Bailey Award for Most Outstanding Graduate in Humanities; First Class Honors; Awards for most outstanding graduate, third year, and first year in philosophy

EXPERIENCE

ELECTRONIC FRONTIER FOUNDATION

San Francisco, CA January 2013-present

Staff Attorney and Mark Cuban Chair to Eliminate Stupid Patents. Litigate patent, copyright, trademark, and right of publicity cases. Prepare amicus briefs for Supreme Court cases including *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, and *Nautilus, Inc. v. Biosig Instruments, Inc.* Prepare submissions and public comments to government agencies. Conduct speaking engagements and write about intellectual property and civil liberties (blog at <https://www.eff.org/about/staff/daniel-nazer>).

CENTER FOR INTERNET AND SOCIETY, STANFORD LAW SCHOOL

Stanford, CA June 2011-present

Residential Fellow. Litigated copyright and First Amendment cases, including *Golan v. Holder*. Advised musicians, filmmakers, and other artists regarding copyright, trademark, right of publicity, First Amendment, and media law issues. Conducted speaking engagements and blog regarding copyright law and freedom of expression (blog at <http://cyberlaw.stanford.edu/blog/daniel-nazer>).

KEKER & VAN NEST, LLP

San Francisco, CA 2007-2011

Associate. Lead counsel in successful challenge to speech restrictions at the Golden Gate Bridge. Member of trial team representing generic drug company plaintiff bringing antitrust and patent misuse claims against a major pharmaceutical company. Drafted motions for summary judgment and motions to dismiss in patent, antitrust, securities, and professional negligence cases. Managed all stages of federal discovery.

AMERICAN CIVIL LIBERTIES UNION, DRUG LAW REFORM PROJECT

Santa Cruz, CA 2006-2007

Legal Fellow. Assisted with impact litigation challenging punitive drug policies. Worked on actions challenging racial profiling in drug law enforcement, defending California's medical marijuana laws from federal constitutional challenge, and quashing a federal grand jury subpoena served on medical clinic.

JUSTICE SUSAN KENNY, FEDERAL COURT OF AUSTRALIA

Melbourne, Australia 2005-2006 term

Judge's Associate. Assisted Judge with federal trial and appellate adjudication. Drafted and edited court opinions and bench memoranda.

JUDGE WILLIAM K. SESSIONS III, UNITED STATES DISTRICT COURT

Burlington, VT 2004-2005 term

Law Clerk. Drafted and edited court opinions and bench memoranda. Worked extensively on a death penalty trial during this clerkship year. Judge Sessions was then Vice-Chair of the United States Sentencing Commission.

INTERNSHIPS

Prison Legal Services Clinic (Student Director)

Yale Law School

2002-2004

Alaska Public Defender Service, Felony Unit

Anchorage, AK

Summer 2003

Farmworker Legal Services of New York

New Paltz, NY

Summer 2002

PUBLICATIONS

- Daniel Nazer, *The Tragicomedy of the Surfers' Commons*, 9 DEAKIN L. REV. 655 (2004)
- Daniel Nazer, Note, *Conflict and Solidarity: The Legacy of Evans v. Jeff D.*, 17 GEO. J. LEGAL ETHICS 499 (2004)

EXHIBIT B

Vera Ranieri

Staff Attorney, Electronic Frontier Foundation
(415) 436-9333 x160; vera@eff.org
CA Bar No. 271594

EXPERIENCE *Staff Attorney*

Electronic Frontier Foundation, San Francisco, CA
May 2014 - Present

- Staff Attorney focusing on intellectual property matters, and more specifically, patent reform
- Regular speaker and writer on issues relating to patent law and the need for reform so as to better promote innovation
- Lead writer and contributor of several amicus curiae briefs at all levels of the Federal Judiciary

A list of representative judicial filings and publications is attached.

Intellectual Property Litigation Associate

Greenberg Traurig, LLP, San Francisco, CA
Fall 2010 - May 2014

- Lead associate on multiple, concurrent intellectual property litigation matters, responsible for proposing strategy, drafting motions, propounding and responding to discovery, and trial
- Regular advisor to clients regarding intellectual property risks associated with new product development, and in particular, risks relating to music copyrights
- Pro Bono attorney for the Electronic Frontier Foundation for its 'Save Podcasting' campaign

Research Assistant

Canadian Internet Policy and Public Interest Clinic, Ottawa, Canada
January 2010

- Copyright reform and privacy legal researcher
- Involved in extensive testing of Facebook to search for potential privacy violations
- Substantively edited Wikipedia to reflect recent developments in Canadian intellectual property law

Vera Ranieri

Staff Attorney, Electronic Frontier Foundation
(415) 436-9333 x160; vera@eff.org
CA Bar No. 271594

EXPERIENCE *Legal Intern*

Weil, Gotshal & Manges, Redwood Shores, CA
Summer 2009

- Summer Associate in patent and new media litigation practice groups
- Offer for permanent employment received

Google Policy Fellow - Legal Intern

Center for Democracy & Technology, Washington, D.C.
Summer 2008

- Investigator and reporter on legal issues related to the Internet, including free speech, searches and seizures, copyright, and FCC regulations
- Contributed substantially to an amicus brief filed in the Central District of California

EDUCATION *Juris Doctor*

Harvard Law School, Cambridge, MA
2010

- Article Editor for Journal of Law & Technology
- Participant in ACS Moot Court
- Emphasis on intellectual property and new media coursework

Bachelor of Science, with distinction, Mathematics; minor Computer Science

Mount Allison University, Sackville, Canada
2006

- Recipient of David Gilchrist Chalmers Prize in Mathematics for Excellence in Math and Community Involvement, 2004 and 2006
- One of ten national recipients of Canadian Distributed Mentorship Program Scholarship for Women in Computer Science, 2005
- Teaching assistant for Mathematics and Physics Departments
- Member of University Judicial Council, the 7-member body tasked with adjudicating non-academic related infractions

OTHER
SKILLS

Proficient in French, basic knowledge of Russian. Strong technical background with knowledge of several programming languages and their theoretical underpinnings.

Vera Ranieri

Staff Attorney, Electronic Frontier Foundation
(415) 436-9333 x160; vera@eff.org
CA Bar No. 271594

SELECTED WRITINGS AND PUBLICATIONS

Amicus Curiae Briefs:

Commil USA, LLC, v. Cisco Systems, Inc., No. 13-896, Supreme Court, February 26, 2015.

Richard A Williamson v. Citrix Online, LLC, Case No. 2013-1130, Federal Circuit, December 18, 2014.

Cindy Lee Garcia v. Google, Inc., Youtube LLC, et al, and Nakoula Basseley Nakoula, et al., Case No. 12-57302, Ninth Circuit November 25, 2014.

DietGoal Innovations, LLC v. Bravo Media LLC, Case No. 14-1631, Federal Circuit, November 24, 2014.

Ultramercial, LLC, v. Hulu, LLC, Case No. 2010-1544, Federal Circuit, August 28, 2014.

Online publications (EFF):

In the Spirit of the Holidays: It's Not Too Late for Uber to Avoid Stupid Patent of the Month, December 29, 2014, <https://www.eff.org/deeplinks/2014/12/spirit-holidays-its-not-too-late-uber-avoid-stupid-patent-month>

EFF Asks Court to Shine Light on Patent Troll's Claims, December 9, 2014, <https://www.eff.org/deeplinks/2014/12/eff-asks-court-shine-light-patent-trolls-claims>

EFF to Court: Don't Waste Time, A "Picture Menu" is Not Patentable, November 25, 2014, <https://www.eff.org/deeplinks/2014/11/eff-court-dont-waste-time-picture-menu-not-patentable>

October's Very Bad, No Good, Totally Stupid Patent of the Month: Filming A Yoga Class, October 30, 2014, <https://www.eff.org/deeplinks/2014/10/octobers-very-bad-no-good-totally-stupid-patent-month-filming-yoga-class>

Vera Ranieri

Staff Attorney, Electronic Frontier Foundation
(415) 436-9333 x160; vera@eff.org
CA Bar No. 271594

Updated, Victory! Cost of Defending Against A Troll Is More Than Just A Bridge Toll, October 29, 2014, <https://www.eff.org/deeplinks/2014/08/cost-defending-against-troll-more-just-bridge-toll>

Introducing EFF's Stupid Patent of the Month, July 31, 2014, <https://www.eff.org/deeplinks/2014/07/inaugural-stupid-patent-month>

Why Do Patent Trolls Go to Texas? It's Not for the BBQ, July 9, 2014, <https://www.eff.org/deeplinks/2014/07/why-do-patent-trolls-go-texas-its-not-bbq>

Bad Day for Bad Patents: Supreme Court Unanimously Strikes Down Abstract Software Patent, June 19, 2014, <https://www.eff.org/deeplinks/2014/06/bad-day-bad-patents-supreme-court-unanimously-strikes-down-abstract-software>

Supreme Court Overrules Federal Circuit Again. And Again, June 2, 2014, <https://www.eff.org/deeplinks/2014/06/supreme-court-overrules-federal-circuit-again-and-again>

Senator Leahy Kills Patent Reform (For Now), May 21, 2014, <https://www.eff.org/deeplinks/2014/05/senator-leahy-kills-patent-reform-now>

EXHIBIT C

**ELECTRONIC FRONTIER FOUNDATION**

Protecting Rights and Promoting Freedom on the Electronic Frontier

June 19, 2015

Ruth Taylor
 4905 Davis Drive
 Doylestown, PA 18902-1147

Re: *Garfum Corporation v. Reflections by Ruth*
 Case No. 1:14-cv-05919-JEI-KMW

Professional Services through June 18, 2015

			<u>Rate</u>	<u>Time</u>	<u>Amount</u>
01/22/15	DKN	Call with Ruth Taylor re case background	570.00	0.50	285.00
01/22/15	VR	Call with Ruth Taylor re case background	370.00	0.50	185.00
01/26/15	DKN	Call with Joe Gratz re case strategy	570.00	0.50	285.00
01/26/15	VR	Call with Joe Gratz re case strategy	370.00	0.50	185.00
01/27/15	DKN	Call with R. Taylor, S. Taylor, Gratz re case strategy	570.00	1.00	570.00
01/27/15	VR	Call with R. Taylor, S. Taylor, Gratz re case strategy	370.00	1.00	370.00
02/02/15	DKN	Call with Frank Corrado, Gratz re local counsel tasks	570.00	0.50	285.00
02/02/15	VR	Call with Frank Corrado, Gratz re local counsel tasks	370.00	0.50	185.00
02/03/15	DKN	Review and analyze patent, legal research re motion to dismiss	570.00	2.50	1,425.00
02/03/15	DKN	Correspondence to clients re motion to dismiss, scheduling, and retainer	570.00	0.30	171.00
02/05/15	VR	Draft Answer and Counterclaim	370.00	1.60	592.00

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Ruth Taylor
 June 19, 2015
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02/06/15	VR	Draft Answer and Counterclaim	370.00	3.40	1,258.00
02/06/15	DKN	Legal research re motion to dismiss	570.00	1.50	855.00
02/06/15	DKN	Draft and edit motion to dismiss	570.00	3.50	1,995.00
02/07/15	DKN	Draft and edit motion to dismiss	570.00	2.00	1,140.00
02/08/15	DKN	Research and review rules re motion to dismiss	570.00	0.10	57.00
02/08/15	DKN	Review and respond to correspondence re motion to dismiss	570.00	0.10	57.00
02/09/15	VR	Phone call with R. Taylor, S. Taylor regarding answer and counterclaims	370.00	1.00	370.00
02/09/15	DKN	Draft and edit motion to dismiss	570.00	7.50	4,275.00
02/10/15	VR	Revise answer and counterclaims	370.00	0.30	111.00
02/10/15	VR	Revise motion to dismiss	370.00	2.90	1,073.00
02/10/15	DKN	Draft and edit motion to dismiss	570.00	2.00	1,140.00
02/10/15	DKN	Draft supporting pleadings for motion to dismiss	570.00	1.50	855.00
03/04/15	VR	Call with R. Taylor re settlement offer	370.00	0.50	185.00
03/04/15	DKN	Call with R. Taylor re settlement offer	570.00	0.50	285.00
03/17/15	VR	Call with R. Taylor, S. Taylor re Garfum settlement discussions	370.00	0.50	185.00
03/17/15	DKN	Correspondence with Gratz and Corrado re settlement issues	570.00	0.30	171.00
03/17/15	DKN	Call with R. Taylor, S. Taylor re Garfum settlement discussions	570.00	0.50	285.00
03/20/15	VR	Email to R. Taylor re Garfum pending application	370.00	0.30	111.00

Ruth Taylor
 June 19, 2015
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03/23/15	DKN	Correspondence with Corrado and Gratz re status conference	570.00	0.20	114.00
03/24/15	DKN	Correspondence with Corrado and Gratz re settlement issues and status conference	570.00	0.20	114.00
03/24/15	DKN	Status conference with court	570.00	0.20	114.00
03/26/15	DKN	Conference call with Gratz and Corrado re case strategy	570.00	0.50	285.00
04/06/15	DKN	Review and analyze Garfum opposition to motion to dismiss	570.00	1.50	855.00
04/07/15	DKN	Review and analyze Garfum opposition to motion to dismiss	570.00	1.00	570.00
04/07/15	DKN	Legal research re motion to dismiss reply	570.00	3.50	1,995.00
04/07/15	DKN	Draft and edit motion to dismiss reply	570.00	5.00	2,850.00
04/08/15	DKN	Draft and edit motion to dismiss reply	570.00	12.50	7,125.00
04/09/15	DKN	Draft and edit motion to dismiss reply	570.00	6.00	3,420.00
04/10/15	DKN	Draft and edit motion to dismiss reply	570.00	2.50	1,425.00
05/21/15	DKN	Correspondence with Gratz re plaintiffs' covenant and motion to dismiss	570.00	0.20	114.00
05/25/15	DKN	Legal research re motion for fees	570.00	2.50	1,425.00
05/25/15	DKN	Correspondence / memo to team re motion for fees	570.00	0.30	171.00
05/26/15	DKN	Call with Gratz re motion for fees	570.00	0.60	342.00
05/26/15	DKN	Draft and edit motion for fees	570.00	1.50	855.00
06/05/15	DKN	Draft and edit motion for fees	570.00	2.90	1,653.00
06/10/15	DKN	Draft and edit motion for fees	570.00	4.30	2,451.00
06/12/15	DKN	Draft and edit motion for fees	570.00	3.50	1,995.00

Ruth Taylor
 June 19, 2015
 Page 4 of 4

06/13/15	DKN	Draft and edit motion for fees	570.00	3.00	1,710.00
06/14/15	DKN	Draft and edit motion for fees	570.00	3.20	1,824.00
06/14/15	DKN	Correspondence to Gratz, Corrado, and Ranieri re motion for fees	570.00	0.20	114.00
06/15/15	DKN	Draft and edit supporting declarations re motion for fees	570.00	1.50	855.00
06/17/15	DKN	Draft and edit motion for fees	570.00	1.80	1,026.00
06/17/15	DKN	Draft and edit supporting declarations re motion for fees	570.00	3.40	1,938.00
06/18/15	DKN	Draft and edit supporting declarations re motion for fees	570.00	1.00	570.00
For Professional Services Rendered				100.80	\$54,856.00

Summary by Timekeeper

Timekeeper	Category	Rate	Hours	Amount
Daniel K. Nazer, Esq.	Staff Attorney	\$570.00	87.80	\$50,046.00
Vera Ranieri, Esq.	Staff Attorney	\$370.00	13.00	\$ 4,810.00